

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8495 OF 2006

Satyamma Narsayya Ige Petitioner

versus

Vishwanath Shanarappa Babanagare.... Respondent.

Shri Ramdas P. Sabban for the petitioner
Shri I.M. Khairdi for the Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 2ND JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is a judgment debtor whereas the respondent is a decree holder. The decree has been passed, on 15-2-2004 by the first Appellate Court, for possession in favour of the respondent and against the petitioner, by allowing the appeal calling in question the judgment and decree passed by the trial court, dismissing the suit. The suit was filed on 27-10-1993 and after filing of the suit, the competent authority declared the suit property as slum on 29-11-1993 which was published in a gazette on 6-1-1994. It is as such clear that on the date when the suit was filed, the property was not comprised in

the slum area. However, during the pendency of the suit, the same has been declared as falling in slum area.

3. The respondent filed a Darkhast proceeding with a view to execute the decree. In the said proceedings, the present petitioner raised an objection under section 22 of the Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act 1971 contending that unless and until previous permission is obtained from the competent authority, the decree cannot be executed. Rejection of the said objection by the trial court has given rise to filing of this writ petition. Section 22(1)(a) mandates that no person shall, except with the previous permission in writing from the competent authority, institute any suit for obtaining a decree or institute proceedings for obtaining an order for the eviction of an occupier from any building in the slum area. In the present case, admittedly the respondent has initiated execution proceedings without prior permission of the competent authority. Hence the proceedings so commenced are not maintainable in view of section 22(1)(a) of the Act. The objection raised by the petitioner was very much based on the mandatory provision contained in section 22 of the Act, and thus the same ought to have been accepted by the trial

court. The trial court has rejected the objection and issued possession warrant, in favour of the respondent. The impugned order suffers from patent illegality and hence warrants an interference at the hands of this court in exercise of writ jurisdiction. In the result the petition deserves to be allowed.

4. At this stage, the learned counsel for the respondent submits that it be left open for the respondent decree holder to move competent authority and seek permission as contemplated by section 22 of the Act. It is thus made clear that after the respondent secures permission from the competent authority in writing it shall be open for him to institute Darkast proceedings with a view to execute the judgment and decree.

5. The impugned order passed by the Jt. C.J.J.D. Solapur is quashed and set aside. Rule made absolute in above terms with no order as to costs.

...